

Senate Bill 534

By: Senators Grant of the 25th, Goggans of the 7th, Harp of the 29th, Hill of the 4th and Unterman of the 45th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the administration of mental disability services, so as to change certain provisions relating to the community ombudsman program; to provide for duties of the community ombudsman and state ombudsman; to provide for definitions; to provide for related matters; to provide a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the administration of mental disability services, is amended by revising Article 2 in its entirety as follows:

"ARTICLE 2

37-2-30.

As used in this article, the term:

(1) 'Consumer' means a person with a disability who receives or is eligible to receive disability services from a services provider which provides disability services in a regional board district in which the program is operated.

(2) 'Co-occurring disorder' means a mental health disorder and a substance abuse disorder or a mental health disorder and a development disability.

(3) 'Disability' and 'disability services' have the same meaning as provided in Code Section 37-2-2.

(4) 'Ombudsman' means the office of mental health ombudsman created under Code Section 37-2-31.

(5) 'Services provider' means a community service board or state or local governmental entity which provides disability services to consumers in a regional board district in

1 which the program is operated or which contracts for the provision of those services or
2 any person, corporation, or business which provides disability services to consumers in
3 a regional board district in which the program is operated.

4 37-2-31.

5 (a) There is created the office of mental health ombudsman. The mental health
6 ombudsman shall be charged with promoting the highest attainable standards of treatment,
7 competency, efficiency, and justice for persons receiving services for mental illness and
8 co-occurring disorders. The ombudsman shall have the powers and duties set forth in this
9 article.

10 (b) The Governor, by executive order, shall create a nominating committee which shall
11 consider nominees for the position of the ombudsman and shall make a recommendation
12 to the Governor. Such person shall have knowledge and experience concerning the
13 treatment, needs, and rights of consumers with mental health disorders or co-occurring
14 disorders and shall have the skills to perform the duties set forth in this article. The
15 ombudsman shall serve a term of five years and until his or her successor is appointed and
16 qualified and may be reappointed.

17 (c) The ombudsman shall be appointed from a list of at least three persons prepared and
18 submitted by a nominating committee appointed by the Governor and consisting of:

19 (1) One former consumer of the division;

20 (2) One representative of the division;

21 (3) One representative of an advocacy organization for consumers served by a services
22 provider;

23 (4) One representative of law enforcement;

24 (5) One psychiatrist; and

25 (6) One psychologist with a Ph.D. degree.

26 (d) The ombudsman shall act independently of any state official, department, or agency
27 in the performance of his or her duties. The ombudsman shall be assigned to the
28 Governor's Office of Consumer Affairs for administrative purposes only. No person shall
29 serve as ombudsman while holding another public office.

30 (e) The ombudsman may appoint such deputy ombudsmen and staff as may be deemed
31 necessary to effectively fulfill the purposes of this article, within the limits of the funds
32 available for the purposes of the ombudsman. The duties of the deputy ombudsmen and
33 staff may include the duties and powers of the ombudsman if performed under the direction
34 of the ombudsman. The ombudsman and his or her deputies and staff shall receive such
35 reimbursement for travel and other expenses as is normally allowed to state employees,
36 from funds appropriated for the purposes of the ombudsman.

(f) The ombudsman shall have the authority to contract with experts in fields including but not limited to medicine, psychology, child development, mental health, addiction services, child welfare, and the law as needed to support the work of the ombudsman, utilizing funds appropriated for the purposes of the ombudsman.

(g) The General Assembly shall annually appropriate those sums it deems necessary for the payment of the salaries and related costs of qualified staff and for the payment of office expenses and other actual or necessary expenses of the ombudsman.

(h) Any advocacy function performed on behalf of any mental health disorder consumer or co-occurring disorder consumer of the department shall be transferred to the ombudsman.

37-2-32.

The state ombudsman shall:

(1) Establish policies and procedures for receiving, investigating, referring, and attempting to resolve complaints made by or on behalf of consumers concerning any act, omission to act, practice, policy, or procedure of a services provider that may adversely affect the health, safety, or welfare of any consumer or the delivery of disability services to such consumer;

(2) Investigate and make reports and recommendations to the department and other appropriate agencies concerning any act or failure to act by any services provider with respect to its responsibilities and duties in connection with consumers receiving or eligible to receive disability services from such provider;

(3) Establish a uniform state-wide reporting system to record data about complaints and conditions with regard to services providers and collect and analyze such data in order to identify significant problems affecting consumers receiving or eligible to receive disability services from such providers;

(4) Promote the interests of consumers before governmental agencies and seek administrative and other remedies to protect the health, safety, welfare, and rights of the consumers by:

(A) Analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the consumers with respect to the adequacy of disability services in the state;

(B) Recommending any changes in such laws, regulations, policies, and actions as the ombudsman determines to be appropriate; and

(C) Facilitating public comment on the laws, regulations, policies, and actions; and

(5) Make an annual written report, documenting the types of complaints and problems reported by consumers and others on their behalf and include recommendations concerning needed policy, regulatory, and legislative changes. The annual report shall be submitted to the Governor, the General Assembly, the commissioner of human resources, and other appropriate agencies and organizations and made available to the public. The ombudsman shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient.

37-2-33.

(a) The state ombudsman on his or her initiative or in response to complaints made by or on behalf of consumers may conduct investigations in matters within his or her powers and duties as provided by this article.

(b) The ombudsman shall have the authority to enter any facility, premises, or property where disability services are provided. Upon entering such facility, premises, or property, the ombudsman shall notify the administrator or, in the absence of the administrator, the person in charge of such facility, premises, or property before speaking to any consumer. After notifying the administrator or the person in charge of such facility, premises, or property, the ombudsman may communicate privately and confidentially with consumers in such facility, premises, or property individually or in groups. The ombudsman shall have access to the medical, social, and disability records of any consumer if:

(1) The ombudsman has the permission of the consumer or the legal representative or guardian of the consumer;

(2) The consumer is unable to consent to the review and has no legal representative or guardian; or

(3) There is a guardian of the person of the consumer and that guardian refuses to permit access to the records necessary to investigate a complaint, and there is reasonable cause to believe that the guardian is not acting in the best interest of the consumer.

As used in this Code section, the term 'legal representative' means an agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care or health care agent under an advance directive for health care; or an executor, executrix, administrator, or administratrix of the estate of a deceased consumer. The ombudsman shall have the authority to inspect the physical plant and have access to the administrative records, policies, and documents of the facility, premises, or property to which the consumers have or the general public has access. Entry and investigation as provided by this Code section shall be conducted in a

1 manner which will not significantly disrupt the provision of disability services to
2 consumers.

3 (c) The ombudsman shall identify himself or herself as such to the consumer, and the
4 consumer shall have the right to communicate or refuse to communicate with the
5 ombudsman.

6 (d) The consumer or the consumer's legal representative shall have the right to participate
7 in planning any course of action to be taken on the consumer's behalf by the ombudsman,
8 and the consumer or such representative shall have the right to approve or disapprove any
9 proposed action to be taken on the consumer's behalf by such ombudsman.

10 (e) The ombudsman shall have the authority to obtain from any department, governmental
11 agency, or services provider which receives state funds for disability services, and such
12 department, agency, or provider shall provide cooperation and assistance, services, data,
13 and access to, such files and records as will enable the ombudsman properly to perform his
14 or her duties and exercise his or her powers, provided that such information is not
15 privileged under any law.

16 (f) Where the subject of the investigation involves suspected abuse, neglect, or exploitation
17 of a consumer by his or her guardian, the ombudsman shall have the authority to
18 communicate with the consumer in a private and confidential setting notwithstanding any
19 objection by the guardian to such meeting and communication.

20 (g) The ombudsman shall advise the consumer of the need for adequate legal counsel as
21 well as consultation needed to protect the health, safety, welfare, and rights of the
22 consumer.

23 37-2-34.

24 (a) Following an investigation, the ombudsman shall report his or her opinions or
25 recommendations to the party or parties affected thereby and shall attempt to resolve the
26 complaint using, whenever possible, informal techniques of mediation, conciliation, and
27 persuasion. With respect to a complaint against the services provider, the ombudsman shall
28 first notify the administrator or person in charge of that provider in writing and give such
29 person a reasonable opportunity to correct any alleged defect. If so notified and the
30 administrator or person in charge fails to take corrective action after a reasonable amount
31 of time or if the defect seriously threatens the safety or well-being of any consumer, the
32 ombudsman may refer the complaint to the appropriate regional board and any other
33 appropriate agency.

34 (b) Complaints or conditions adversely affecting consumers which cannot be resolved in
35 the manner described in subsection (a) of this Code section shall, whenever possible, be

1 referred by the ombudsman to the appropriate regional board and any other appropriate
2 agency.

3 37-2-35.

4 Any person who has reasonable cause to believe that a consumer is being or has been
5 abused, neglected, exploited, or abandoned, is in a condition which is the result of abuse,
6 neglect, exploitation, or abandonment, or is being denied disability services for which such
7 consumer is eligible may report such information or cause a report to be made in any
8 reasonable manner to the ombudsman.

9 37-2-36.

10 The identity of any complainant, consumer on whose behalf a complaint is made, or
11 individual providing information on behalf of the consumer or complainant relevant to the
12 investigation of a complaint shall be confidential and may be disclosed only with the
13 express permission of such person. The information produced by an investigation may be
14 disclosed by the ombudsman only if the identity of any such person is not disclosed by
15 name or inference. If the identity of any such person is disclosed by name or inference in
16 such information, the information may be disclosed only with his or her express
17 permission. If the complaint becomes the subject of a judicial proceeding, such
18 investigative information may be disclosed for the purpose of the proceeding.

19 37-2-37.

20 The ombudsman shall prepare and distribute to each services provider in the state and
21 regional board in which the program is operated a written notice describing the program
22 and the procedure to follow in making a complaint, including the address and telephone
23 number of the state ombudsman. The administrator or person in charge of such provider
24 shall give the written notice required by this Code section to each consumer who receives
25 disability services from such provider and his or her legally appointed guardian, if any,
26 upon first providing such services. The administrator or person in charge shall also post
27 such written notice in conspicuous public places in the facility, premises, or property in
28 which disability services are provided in accordance with procedures provided by the state
29 ombudsman and shall give such notice to any consumer and his or her legally appointed
30 guardian, if any, who did not receive it upon the consumer's first receiving disability
31 services. The failure to provide the notices required by this Code section shall be a ground
32 upon which the director of the division may impose the civil penalty authorized by Code
33 Section 37-2-38 under the conditions specified in such Code section.

37-2-38.

(a) No person shall discriminate or retaliate in any manner against any consumer or relative or guardian of a consumer, any employee of a services provider, or any other person because of the making of a complaint or the providing of information in good faith to the state ombudsman. No person shall willfully interfere with the state ombudsman in the performance of his or her official duties.

(b) A member of a regional board or community service board who violates subsection (a) of this Code section shall be subject to permanent removal from such board by the director of the division.

(c) A services provider which violates subsection (a) of this Code section shall be subject to one or more of the following sanctions which may be imposed by the director of the division:

(1) The termination of any contract for which state funds are received for the provision of disability services if such contract was executed on or after July 1, 2008; or

(2) The payment of a civil penalty not to exceed \$5,000.00 for each violation.

(d) Any employee of a services provider determined to have committed a violation of subsection (a) of this Code section shall be subject to suspension without pay for a period of not less than two months or termination.

(e) An action against a member of a regional board, community service board, or services provider under this Code section shall be a contested case within Article 1 of Chapter 13 of Title 50, relating to administrative procedure.

37-2-39.

The ombudsman and commissioner shall obtain federal financial participation for eligible activity by the ombudsman. The ombudsman shall maintain and transmit to the department documentation that is necessary in order to obtain federal funds which shall be applied to the budget of the ombudsman.

37-2-40.

Notwithstanding any other provision of law, no person providing information, including but not limited to a consumer's records, to the state ombudsman shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing such information knew or had reason to believe that it was false.

1 37-2-41.

2 (a) Any person who, in good faith, makes a complaint or provides information as
3 authorized in this article shall incur no civil or criminal liability therefor.

4 (b) The State of Georgia shall protect and hold harmless the ombudsman and employees
5 of the office of ombudsman, including legal fees and costs, if any, arising out of any claim,
6 demand, or suit for damages resulting from acts or omissions committed in the discharge
7 of his or her duties for any action taken under this article if the action was taken in good
8 faith, was within the scope of the ombudsman's authority, and did not constitute willful or
9 reckless misconduct.

10 37-2-42.

11 Nothing in this article shall be construed to limit the power of the department to investigate
12 complaints where otherwise authorized by law.

13 37-2-43.

14 The state ombudsman shall promulgate rules and regulations to implement this article."

15 **SECTION 2.**

16 This Act shall become effective only if funds are specifically appropriated for the purposes
17 of this Act in a General Appropriations Act making specific reference to this Act and shall
18 become effective when funds so appropriated become available for expenditure.

19 **SECTION 3.**

20 All laws and parts of laws in conflict with this Act are repealed.